◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

-

AND

-

THE HON'BLE SRI JUSTICE P.S.NARAYANA

-

+ WRIT APPEAL No.484 OF 2004

% Dated 12.7.2004

# Kota Hariprasad

…. APPELLANT

Vs.

$ Legadapati Venkataiah and others

….Respondents

! Counsel for Appellant: Mr. Rama Rao Ganta, Advocate.

^Counsel for Respondents: Mr. Subbarao Korrapati

<GIST:

> HEAD NOTE:

? Cases referred

1. (2004) 1 Supreme Court Cases 46

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWELETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE BILAL NAZKI**

**and**
**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT APPEAL NO : 484 of 2004**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/06/2003 in WP NO : 7822 OF 2002 on the file of the High Court.)

Between:

Kota Hariprasad, S/o Abaddaiah,
Parchur Gram Panchayat, Parachur, Prakasam District.

**..... APPELLANT**

AND

1 Legadapati Venkataiah, S/o Abaddaiah,
R/o Parchur Village, Prakasam District.
2 The Principal Junior Civil Judge-cum-Election Tribunal, Parchur

(Panchayat Raj Act), Prakasam District.
3 Katari Sreekrishna, S/o Sreeramulu,
R/o Paruchur, Prakasam District.
4 Rangisetty Anjaneyulu, S/o Pothuraju,
R/o Parchur, Prakasam District.
5 The Grampanchayath, Parchur rep.by its Executive Officer, Purchur,
Prakasam District.
6 The Election Officer, Grama Panchayath, Parchur, Stagg II by name Ravi

Subba Rao,
Lecturer, D.N.M.Junior College, Inkollu.
7 The Mandal Election Officer cum Mandal Development Officer, Parchur,

Prakasam District.
8 The District Election Authority cum District Collector, Prakasam District,

Ongole.

**.....RESPONDENT(S)**

**Counsel for the Appellant: MR.RAMA RAO GANTA, Advocate Counsel for the Respondent No.1: MR.SUBBA RAO KORRAPATI,**

**Advocate**

**Counsel for respondents:2, 7 and 8: GP for Panchayat Raj**

**Counsel for respondent No:3 ---**

**Counsel for respondents 5 and 6: Mr. D.Srinivas, SC for**

**Panchayat Raj**

**Counsel for respondent No.4 : Mr. P.Srihari, Advocate**

**The Court made the following :**

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties. This is a writ appeal against the judgment of a learned single Judge of this Court in W.P.No. 7822 of 2002.

The appellant's election as Sarpanch of Parchur Gram Panchayat was challenged by the 1st respondent herein in an election petition before the Election Tribunal-cum-Prinicipal Junior Civil Judge, Parchur. The elected appellant filed an application for dismissing the election petition on various grounds. The only ground which was agitated before the learned single Judge and which has been agitated before us was that the election petition was not verified in terms of Order 6, Rule 15 of the Civil Procedure Code. The Election Tribunal allowed the application. That order was challenged by way of writ petition. The learned single Judge of this Court reversed the order of the Election Tribunal and gave liberty to the 1st respondent to take steps for rectification of the defects. The defect which is the subject matter of controversy is that the 1st respondent stated in the verification,

> "I declare that the contents of paragraphs IV of the above petition are true within my personal knowledge, and the contents in paras V and VI are believed by me, on credible information received to be correct."

The case of the appellant was that the 1st respondent has omitted to verify the paragraphs I to III, whereas the case of the 1st respondent was that due to typographical mistake the words "I to" have been omitted. Now the only question before us is whether this deficiency could be corrected or not. The learned counsel for the appellant submits that the learned single Judge committed a mistake

by holding that this was a mistake which could have been corrected, as it was not a curable defect.

Rule 3 of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short "the Rules") lays down the method in which the election petition has to be presented and the time of its presentation. The explanation (ii) to Rule 3 is relevant, which reads,

> "The petition shall contain a statement in concise form, the material facts on which the petitioner relies and the particulars of any corrupt practices which he alleges and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908."

The learned counsel for the appellant submits that the defect is not curable and even explanation (ii) to Rule 3 of the Rules prescribes that the petition has to be verified in the manner laid down by the Code of Civil Procedure. But the learned counsel for the 1st respondent submits that there is a similar section in the Representation of the People Act, 1951 being Section 83. Section 83 is also quoted below,

"83. Contents of petition, - (1) An election petition-

a. shall contain a concise statement of the material facts on which the petitioner relies;

b. shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

c. shall be signed by the petitioner and verified in the manner laid down in the Code of Civil

Procedure, 1908 (5 of 1908) for the verification of pleadings;

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

This is almost para materia to explanation (ii) of Rule 3 of the Rules. There are many judgments which have been cited at the bar, but we are of the view that it will not be necessary to refer to all the judgments, as we have been shown a latest judgment of the Supreme Court being *Regu Mahesh Alias Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev and another* . Similar questions arose in the case before the Supreme Court and the Supreme Court noted section 83 of the Representation of the People Act and it referred to earlier judgments. It followed the earlier judgment of a 3-Judge Bench in *F.A. Sapa Vs. Singora* (1991) 3 SCC 375), which had laid down in para-28,

"28. From the text of the relevant provisions of the RP Act, Rule 94-A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume of the case-law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form 25 can be cured…"

Following these judgments, we are of the view that the learned single Judge was right in treating the defect as curable defect. The learned counsel for the appellant then would contend that since it was pointed out to the 1st respondent that there was a defect in the verification, but he did not take any steps to correct the defect. But from the order of the Election Tribunal it is found that immediately thereafter the 1st respondent has filed a separate affidavit in which he had verified the contents of the election petition, but the Election Tribunal did not take that into account on the ground that he had to verify the contents of the election petition at the foot and not by another affidavit. In our view, this was too a technical view taken by the Election Tribunal. The 1st respondent has already been granted liberty by the learned single Judge to correct the defect and if he makes such an application seeking amendments and corrections in the verification of the election petition, the Election Tribunal shall allow it to be done. The application shall be made within a week from the date of receipt of this order. The appeal is dismissed. No costs.

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BN J.

_____

PSN J.

Dt. 12.7.2004

KR

Sd/-

Dy. Registrar

/True copy/

Section Officer

One Fair copy to the Hon'ble Mr. Justice Bilal Nazki (For his Lordship's kind perusal)

One Fair copy to the Hon'ble Mr. Justice P.S. Narayana (For his Lordship's kind perusal)

**To**

1. The Principal Junior Civil Judge-cum-Election Tribunal, Parchur

(Panchayat Raj Act), Prakasam District.

2 The Grampanchayath, Parchur rep.by its Executive Officer, Purchur, Prakasam District.

3. The Election Officer, Grama Panchayath, Parchur, Stagg II by name Ravi

Subba Rao, Lecturer, D.N.M.Junior College, Inkollu.

4. The Mandal Election Officer cum Mandal Development Officer, Parchur,

Prakasam District.

5. The District Election Authority cum District Collector, Prakasam District,

Ongole.

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